

ORDINANCE NO. 17-12-04

**AN ORDINANCE OF THE CITY OF NICEVILLE, FLORIDA
PROHIBITING MEDICAL MARIJUANA DISPENSARIES;
PROHIBITING MEDICAL MARIJUANA CULTIVATION
FACILITIES AND MEDICAL MARIJUANA PROCESSING
FACILITIES; CREATING ARTICLE II SECTIONS 3-16 AND 3-17 OF
CHAPTER 3, OF THE CODE OF ORDINANCES OF THE CITY OF
NICEVILLE, FLORIDA "MEDICAL MARIJUANA DISPENSARIES";
PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS;
PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN
EFFECTIVE DATE**

WHEREAS, pursuant to Article VIII, Section 2(b) Constitution of the State of Florida, and Chapter 166 of the Florida Statutes, the City of Niceville, a municipal corporation, possess all governmental, corporate, and proprietary powers necessary to protect the health, safety, and welfare of the City's citizens and has the inherent authority to enact this ordinance; and

WHEREAS, pursuant to Section 166.021(3), Florida Statutes, the City has the power to enact legislation concerning subject matter upon which the state legislature may act, except when expressly prohibited by law; and

WHEREAS, the Florida Legislature enacted the Compassionate Medical Cannabis Act, Section 381.986, Florida Statutes (2014), which legalized the cultivation, processing and dispensing of "Low-THC Cannabis", by a license dispensing organization for "qualified patients", Section 381.986(1)(b)(c), Florida Statutes; and

WHEREAS, the Florida Legislature amended the Right to Try Act, Section 499.0295 Florida Statutes (2016), which amended the Compassionate Medical Cannabis Act which legalized the cultivation, production and dispensing "Medical Cannabis", Section 381.986(1)(f), Florida Statutes, and derivative products by licensed dispensing organization to "Eligible Patients", Section 499.0295, Florida Statutes (2016); and

WHEREAS, the comprehensive State licensing and regulatory framework directs that

the criteria for the number and location of, and other permitting requirements that do not conflict with state law or department rule for, dispensing facilities of cannabis may be determined by local ordinance; and

WHEREAS, pursuant to Section 381.986(8)(b), Florida Statutes, permits municipalities to “determine by ordinance the criteria for the number and location of, and other permitting requirements that do not conflict with state law or department rule for all dispensing facilities or dispensing organizations located within its municipal boundaries”; and

WHEREAS, businesses licensed pursuant to the law have begun cultivating cannabis for processing and dispensing; and

WHEREAS, under federal law, cannabis is currently illegal and the United States Drug Enforcement Agency has confirmed that cannabis remains a Schedule 1 drug under federal law, but the United States Department of Justice has discussed federal enforcement of laws with respect to state regulated cannabis operations in the “Cole Memorandum” (2012); and

WHEREAS, potential adverse impacts on the health, safety, and welfare of residents and business from secondary effects associated with the distribution of cannabis exist, potentially including, offensive odors, trespassing, theft, fire hazards, increased crime in and about the dispensary, robberies, negative impacts on nearby businesses, nuisance problems, and increased DUI incidents; and

WHEREAS, in November of 2016, Florida voters decided to amend the Florida Constitution to legalize cultivation, production and dispensing of medical cannabis for a broader population of eligible patients; and

WHEREAS, Florida laws relating to the cultivation, production, and dispensing of cannabis products are rapidly changing – raising substantial questions about whether cannabis - related uses, may have deleterious and negative secondary effects on the City; and

WHEREAS, the City Council of the City of Niceville, Florida determines that it is in the best interest of its residents, businesses and visitors to enact sufficient zoning regulations to ensure their health, safety, and welfare; and

WHEREAS, on June 23, 2017, the state legislature passed new legislation amending Section 381.986, Florida Statutes which affects the medical use of marijuana in the State, including the regulation of dispensaries, cultivation and processing facilities; and

WHEREAS, the City of Niceville, Florida is strategically located in close proximity to Eglin Air Force Base; and

WHEREAS, other cities geographically close to the City of Niceville, Florida allow for medical marijuana dispensaries within their city limits, which will provide the citizens of the City of Niceville, Florida reasonably close access to medical marijuana dispensaries; and

WHEREAS, the City of Niceville, Florida finds that banning the existence of medical marijuana dispensaries, and medical marijuana cultivation and processing facilities within the city limits is in the best interest of the public health, safety and welfare of the citizens of the City of Niceville, and will not unreasonably hinder the needs of patients seeking medical products due to the neighboring cities' allowance of such dispensaries.

WHEREAS, the purpose of this ordinance is to ban and dis-allow the existence of medical marijuana dispensaries, and medical marijuana cultivation and processing facilities within the city limits of the City of Niceville and to create Article II Sections 3-16 and 3-17 of Chapter 3, of the Code of Ordinances of the City of Niceville, Florida "MEDICAL MARIJUANA DISPENSARIES".

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the City of Niceville, Florida:

SECTION 1. AUTHORITY. This ordinance is adopted pursuant to Article VIII, Section 2(b), of the Florida Constitution, and Chapter 166, Florida Statutes.

SECTION 2. Creating Article II Sections 3-16 and 3-17 of Chapter 3, of the Code of Ordinances of the City of Niceville, Florida “MEDICAL MARIJUANA DISPENSARIES “of the ordinances of the City of Niceville, Florida be created to read as follows:

SEC 3-16 – Definitions. The following definition applies to the term used in this Ordinance:

- (a) **MARIJUANA:** has the meaning given cannabis in Section 893.02(3), Florida Statutes (2014), and in addition, “low-THC cannabis” as defined in section 381.986(1)(b), Florida Statutes (2014).
- (b) **MEDICAL MARIJUANA DISPENSING FACILITY:** means any establishment where low-THC, medical cannabis or Marijuana is permitted to be dispensed by an approved dispensing organization pursuant to Section 381.986, Florida Statutes and Florida Department of Health Rules or such subsequently enacted rules and at Medical Marijuana Treatment Centers.

SEC 3-17 – General Requirements.

- (a) **DISPENSARIES BANNED:** Pursuant to Section 381.986(11)(b)1, Florida Statutes, medical marijuana dispensaries are hereby prohibited in the City.
- (b) **CULTIVATION AND PROCESSING:** Medical marijuana cultivation facilities and medical marijuana processing facilities are hereby prohibited in the City.

SECTION 3: SEVERABILITY. If any section, subsection, sentence, clause, phrase or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not be construed to render the remaining provisions of this ordinance invalid or unconstitutional.

SECTION 4: APPLICABILITY. This Ordinance shall be applicable in the incorporated areas of the City of Niceville, Florida

SECTION 5: EFFECTIVE DATE. This Ordinance shall become effective upon final approval and enactment.

PASSED AND ENACTED in regular session upon this third and final reading this 12th day of December, 2017.

Randall Wise
MAYOR

ATTEST:

Daniel J. Doucet
CITY CLERK